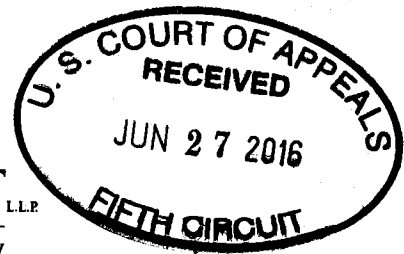




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June 27, 2016

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By Hand

Lyle W. Cayce, Clerk
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place,
New Orleans, LA 70130

**re: 15-60669 NLRB v. VCNCL, LLC d/b/a
Vineyard Court Nursing and Rehabilitation
Center (Argument scheduled July 6, 2016)**

Dear Mr. Cayce:

This letter is in response to the Rule 28 (j) letter submitted by the NLRB. To the extent the NLRB represents the holding in *Macy's* supports its position, it has overstated the decision's support. *Macy's* specifically affirms Employer's argument herein that *Specialty* requires an initial appropriate unit determination be made under the traditional community of interest standard. *Macy's, Inc. v. NLRB*, __ F.3d __, 2016 WL 3124847 (5th Cir. June 2, 2016) *4, *6, *7. Only after such finding is made may other employee classifications be excluded by applying the overwhelming community of interest standard.

Herein, the Regional Director found the petitioned for unit deficient. R. 254. But after doing so the Regional Director failed to use the traditional community of interest analysis to make a finding of an appropriate unit. Employer's Brief pp. 62-66, and Reply Brief 27-31.

What the Regional director did is apply the traditional test to include employees, *except* the LPNs. But she applied the overwhelming standard to exclude the large group of LPNs which the union

Shields Mott L.L.P.

Lyle W. Cayce,
June 27, 2016
Page 2

wanted excluded, even though no appropriate unit had been determined under the traditional standard in the first place. The Regional Director's exclusion of the LPNs violates the *Lundy* and *Specialty* requirements. The Regional Director's unit determination is arbitrary because different tests were used to provide the Union the exclusion it desired.

Macy's, also reaffirms *Lundy's* applicability to the instant case. *Lundy* "prohibits the overwhelming-community-of-interest test where the Board first conducts a deficient community-of-interest analysis - that is where the first step of the Specialty Healthcare test fails to guard against arbitrary exclusions." *Macy's*, *id* at *7, quoting *Dreyer's* 2016 WL 1638039, at *7. Thus *Macy's* supports Employer's unit arguments herein, not the NLRB's.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'NAM', with a long, sweeping horizontal line extending to the right.

Norman A. Mott, III

NAM:nm